



# Journal of the House

State of Indiana

113th General Assembly

First Special Session

First Meeting Day

Monday Morning

October 20, 2003

The members of the House of Representatives of the State of Indiana met in obedience to a call of the Governor, in a Special Session of the 113th General Assembly.

The House was called to order by the Speaker, B. Patrick Bauer, at 11:00 a.m.

The invocation was offered by Reverend Robert Shaneholtz, Central Avenue United Methodist Church, Indianapolis, the church attended by Governor and Mrs. O'Bannon.

The Pledge of Allegiance to the Flag was led by Representative William A. Crawford.

The Speaker announced that a quorum was in attendance for the transaction of business. Representatives Aguilera, Behning, Dobis, Frizzell, and Wolkins were excused.

## EXECUTIVE ORDER 03-37

STATE OF INDIANA  
EXECUTIVE DEPARTMENT  
INDIANAPOLIS

FOR: SPECIAL SESSION OF THE GENERAL ASSEMBLY  
TO CONFIRM LIEUTENANT GOVERNOR

*Whereas, On September 13, 2003, Governor Frank L. O'Bannon died and I, Lieutenant Governor Joseph E. Kernan, took the oath of office to become Governor, as required by Article 5, Section 10(a) of the Indiana Constitution;*

*Whereas, Article 5, Section 10(b) of the Indiana Constitution requires the Governor in these circumstances to nominate a Lieutenant Governor who shall take office upon confirmation by a majority vote in each house of the General Assembly;*

*Whereas, If the General Assembly is not in session when the Governor nominates a Lieutenant Governor, Article 5, Section 10(b) requires the Governor to convene a special session of the General Assembly to receive and act upon the nomination:*

NOW, THEREFORE, I, Joseph E. Kernan, Governor of the State of Indiana, do hereby proclaim and call a special session of the 113th Indiana General Assembly to convene at 11:00 o'clock a.m., Eastern Standard Time, on October 20, 2003.

SEAL

IN TESTIMONY WHEREOF, I, Joseph E. Kernan, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana on this 7th day of October, 2003.

BY THE GOVERNOR: Joseph E. Kernan  
Governor of Indiana

ATTEST: Todd Rokita  
Secretary of State

The Executive Order was read in full.

## ORGANIZATION OF THE FIRST SPECIAL SESSION

### HOUSE MOTION

Mr. Speaker: I move that a committee of four members be appointed by the Speaker to notify the Senate that the House of

Representatives has met, has formed a quorum, and is prepared to proceed with legislative business of the First Special Session of the 113th General Assembly and to receive any communications which the Senate may transmit.

PELATH

Motion prevailed. The Speaker appointed Representatives Oxley, Pflum, Messer, and Thomas.

### COMMITTEE REPORT

Mr. Speaker: Your Committee, appointed to notify the Senate that the House has met, has formed a quorum, and is prepared to proceed with the legislative business of the First Special Session of the 113th General Assembly and to receive any communications which the Senate may transmit, respectfully reports that it has performed the duties assigned to it.

OXLEY  
MESSER

PFLUM  
THOMAS

Report adopted.

### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the following motion:

"I move that Senators K. Adams, Miller, Mrvan, and Bowser be appointed as a committee of four members of the Senate to notify the House of Representatives that the Senate has met, has formed a quorum, and is now prepared to proceed with legislative business and to receive any communications which the House of Representatives may transmit."

MARY C. MENDEL  
Principal Secretary of the Senate

### HOUSE MOTION

Mr. Speaker: I move that a committee of four members be appointed by the Speaker to wait upon the Governor, to notify him of the organization of both Houses of the First Special Session of the 113th General Assembly, and to inform him that they are ready for the transaction of legislative business.

DVORAK

Motion prevailed. The Speaker appointed Representatives Fry, Kromkowski, Borrer, and Stutzman.

### COMMITTEE REPORT

Mr. Speaker: Your Committee, appointed to act with a like committee of the Senate to wait upon the Governor, to notify him of the organization of both Houses of the First Special Session of the 113th General Assembly, and to inform him that they are ready for the transaction of legislative business, begs leave to report that it has performed the duties assigned to it.

FRY  
BORROR

KROMKOWSKI  
STUTZMAN

Report adopted.

### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the following motion has been adopted:

"I move that Senators Long, Dillon, Howard, and Skinner be

appointed as a committee of four members of the Senate to act with a like committee of the House of Representatives to wait upon the Governor and to notify him of the convening of both Houses of the General Assembly and to inform him that they are ready for the transaction of legislative business and to learn from him when it will suit his convenience to submit whatever communication he may offer to the General Assembly."

MARY C. MENDEL  
Principal Secretary of the Senate

## FILLING VACANT LEGISLATIVE OFFICE

### CERTIFICATE OF APPOINTMENT

TO THE HONORABLE B. PATRICK BAUER,  
SPEAKER OF THE HOUSE OF REPRESENTATIVES:

*Whereas, A vacancy occurred in the office of Indiana State Representative, District 57, on April 24, 2003, due to the death of the Honorable Roland Stine, who was elected to office as a candidate of the Indiana Republican Party;*

*Whereas, The duly elected and acting state chairman of the Indiana Republican Party set the place, date, and time of a caucus comprised of the eligible precinct committeemen from Indiana House District 57, and sent a notice by first class mail to all precinct committeemen in the caucus at least ten (10) days before the date of the meeting, setting forth the purpose, place, date, and time of the meeting;*

*Whereas, The duly appointed designee of the state chairman presided over the aforesaid caucus, which was conducted on May 21, 2003, this being not later than thirty (30) days after the vacancy occurred;*

*Whereas, The caucus, voting by secret ballot, and by a majority vote of those casting a ballot for a candidate, selected an individual who resides within Indiana House District 57 to fill this vacancy;*

*Whereas, The individual selected to fill the aforesaid vacancy had filed a declaration of candidacy with the chairman of the caucus, and had previously filed a statement of economic interests under IC 2-2.1-3-2 with the Principal Clerk of the Indiana House of Representatives, at least seventy-two (72) hours before the time fixed for the caucus, all as required by IC 3-13-5-3;*

*Whereas, Under IC 3-13-5-6, the state chairman is required to certify the name of the individual selected under IC 3-13-5-1 to fill this vacancy to the Speaker of the Indiana House of Representatives; and*

*Whereas, Under IC 3-13-5-6, the Speaker of the Indiana House of Representatives is required to acknowledge receipt of this certification, submit a copy of the certificate to be included in the Journal of the House on the day when the individual is seated, (or if this certification is received after the adjournment sine die of the General Assembly, for the first day that the House is in session following receipt of this certificate), and immediately forward the certificate to the Secretary of State of Indiana: NOW, THEREFORE,*

AS THE DULY ELECTED AND ACTING CHAIRMAN  
OF THE INDIANA REPUBLICAN STATE COMMITTEE:

(1) I certify that Allen Lucas Messer was elected by the aforesaid caucus to fill the vacancy existing in the office of Indiana State Representative, District 57.

(2) I request that this Certificate be included in the Journal of the House, as provided by IC 3-13-5-6.

(3) I request that this Certificate be immediately forwarded to the Secretary of State, as provided by IC 3-13-5-6.

*Certified, this the 22nd Day of May, 2003.*

Jim Kittle, Jr.  
Indiana Republican State Chairman

On May 28, 2003, the oath of office was administered to Allen Lucas Messer in the House Chambers by Chief Justice Randall T. Shepard as follows:

"I do solemnly swear or affirm that I will support the Constitution of the United States, and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge the duties of State Representative for the State of Indiana according to the best of my skill and ability, so help me God."

## RECEIPT OF ENROLLED ACTS VETOED

### MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On October 20, 2003, I returned to the Clerk of the House the following bills vetoed after adjournment sine die: House Enrolled Acts 1525, 1660, and 1798.

JOSEPH E. KERNAN  
Governor

### MESSAGE FROM THE CLERK OF THE HOUSE

Mr. Speaker: On this day, October 20, 2003, House Enrolled Acts 1525, 1660, and 1798, enacted by the First Regular Session of the 113th General Assembly and vetoed by Governor O'Bannon, were returned to the House by Governor Kernan and received by me, pursuant to Article 5, Section 14(a)(2)(D) of the Indiana Constitution.

DIANE MASARIU CARTER  
Clerk of the House

### MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: House Enrolled Act 1525 addresses several criminal law issues. It protects victim identity information from disclosure during the discovery process. It makes resisting law enforcement a C felony rather than a D felony if a person uses a vehicle to flee or to create a substantial risk of bodily injury while fleeing. It provides a new defense to trafficking with an inmate. It makes contributing to delinquency a C felony instead of an A misdemeanor if a person knowingly or intentionally furnishes an alcoholic beverage, controlled substance, or drug to a minor and the minor's consumption is the proximate cause of anyone's death. It also contains a non-code section requiring a certain penal facility employee to have re-determination of an adverse employment action.

I support several sections of this bill. The provisions regarding victim identifying information are important. Also, the elevation of sentences for resisting law enforcement and contributing to delinquency probably represent good policy. I am aware of the tragic situation in Northwest Indiana that motivated the change in the statute governing contributing to delinquency.

But during this time of budget stringency, it is necessary to evaluate with special care all provisions that alter sentences in a manner that increases the burden on the Department of Correction. The budget provides no additional funds for the Department's facilities, so additional commitments to the Department will require it to contract for bed space in private facilities or local jails. I must be attentive to these costs in evaluating this legislation.

Based upon the conservative assumption that half of those currently incarcerated for D-felony resisting a police officer did so by making use of an automobile (the other basis for D-felony resisting is use of a dangerous weapon), the elevation of this charge to C felony would cost the state in excess of \$5 million in correctional costs.

Aside from costs, there are two other reasons to veto this bill. The change in the statute adding a defense to the charge of trafficking with an inmate is bad public policy and would make it extremely difficult for the Department of Correction to operate its facilities. The bill would take from the Department and give to a criminal court judge the authority to determine whether certain items are "necessary for the health or safety" of a prisoner. Anything determined by a court to fall into this category could be provided to the prisoner, even if it was prohibited by the Department or otherwise would hamper administration of a correctional facility. In a prison, any item can serve as currency among inmates. The liberalization of the trafficking statute accomplished by this bill would severely undermine the ability of the Department to administer its facilities.

The bill also contains a provision that would require the Department to provide a "redetermination" of an adverse

employment taken against an employee for trafficking with a prisoner. This provision of the bill applies to only one person. This provision represents inappropriate legislative interference with the executive branch's administration of its own personnel system. The disciplinary process has been completed for the employee at issue in this section of the bill, and its result should be allowed to stand.

I hereby veto House Enrolled Act 1525 and return it to the House for further action.

Date: May 8, 2003

FRANK O'BANNON  
Governor

#### MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: House Enrolled Act 1660 contains various provisions regarding endangered adults. Endangered adults are defined as persons over 18 years of age who are incapable of managing their own property or caring for themselves by reason of mental illness, mental retardation, dementia or other physical or mental incapacity, and who are threatened with harm by abuse or neglect.

The bill includes a requirement that the Adult Protective Services Unit investigate any report alleging that a resident of a health care facility is an endangered adult. Current law requires that the Indiana State Department of Health refer each such report for investigation before an investigation can occur, and HEA 1660 eliminates the requirement that ISDH make referrals. It is a good idea to eliminate the statutory requirement of a referral by the State Department of Health, but at this time the State Department of Health is referring for investigation every case it receives. Therefore the intent of this provision of the statute already is being carried out.

The other provisions of the bill increase criminal penalties for battery on an endangered adult. The bill elevates battery on an endangered adult from a D felony to a C felony if serious injury results from the battery, and elevates the offense to a B felony if death results.

These additional penalties are a concern because they will place additional burdens on the Department of Correction, while the budget bill has provided the Department with no additional resources to meet that burden. Currently, the Department has custody of approximately 400 offenders who have been committed for D-felony battery. The Department does not have statistics on how many of those offenders committed battery on endangered adults, but battery is only a D felony if the victim is a member of one of several statutorily specified categories, including law enforcement officers, teachers, persons under 14, and endangered adults. Making the conservative assumption that only five percent of those committed to the Department of Correction for D-felony battery victimized endangered adults, the longer sentences mandated by this bill could increase the prison population and create an additional cost of as much as \$400,000 per year as a result of this legislation.

The General Assembly also has passed HEA 1145, a bill calling for a comprehensive review of sentencing. This legislation recognizes that the time has come for a comprehensive review of sentencing statutes and practices in Indiana.

The proper course is for the General Assembly to reconsider this bill, both because there are no appropriated funds to deal with the additional costs of this legislation and in light of recommendations by the sentencing commission called for by HEA 1145. If the General Assembly chooses to override this veto, it should do so in light of sentencing policies advanced through the method prescribed in HEA 1145. It should also provide the resources necessary to deal with the additional correctional costs generated by the bill.

I hereby veto House Enrolled Act 1660 and return it to the House for further action.

Date: May 1, 2003

FRANK O'BANNON  
Governor

#### MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: House Enrolled Act 1798 deals with four aspects of environmental law. It establishes authority for county stormwater management districts to pay for and manage federal stormwater programs. It addresses the mandate by the Indiana Department of Environmental Management regarding stormwater pipes. It requires cessation of the automobile emissions testing program in Clark and Floyd Counties in 2006 unless certain conditions exist. It also addresses Indiana's authority to regulate wetlands.

As this message explains, I have decided to veto this bill because its resolution of wetlands issues is unsatisfactory even as a starting place for state regulation.

#### *Stormwater provisions*

This bill lays the groundwork for the counties to move forward and effectively implement an important federal stormwater management program to improve the water quality of Indiana's rivers and streams. I support that effort.

Relative to the stormwater provisions of HEA 1798, my administration will work with counties to implement the federal stormwater management program. It is unfortunate that new authority to establish a mechanism to implement this federal provision will be delayed. I am confident that the stormwater authority can ultimately be established in time to develop effective stormwater management plans.

#### *Auto emissions testing provisions*

Relative to automobile emissions testing in Clark and Floyd Counties, my administration will take no step to extend the existing contract for the automobile emission testing program in Clark and Floyd Counties before the end of the next session of the General Assembly. The earliest this testing could stop without incurring penalties is December 31, 2006, so time remains to address this issue.

#### *Wetlands provisions*

The bill also addresses the issue of "isolated wetlands" in Indiana. A U.S. Supreme Court decision in 2001 left about one-third of our state's wetlands without federal protection. State authority to regulate these wetlands has been challenged and is now in state court.

I asked the Department of Natural Resources, Department of Environmental Management and the Office of the Commissioner of Agriculture to work together and with others this session and beyond to establish a sound wetland conservation strategy for Indiana. The state agencies have participated in all discussions relating to legislation and worked to provide information to Hoosiers and legislators on wetlands.

HEA 1798 contains the results of this year's deliberations on wetland legislation. The bill creates an isolated wetland protection scheme. The bill notes goals of "no net loss of wetlands" and a "net gain of high quality wetlands," and I support those goals.

It is clear, however, that HEA 1798 will not achieve these goals.

Wetlands are natural resources that function to enhance the state's water quality, to enhance our natural habitat and to provide recreational opportunities. The continued net loss of wetlands in a state that has lost about 85 percent of the original wetlands is unacceptable.

I commend members of the General Assembly, particularly those who participated in last summer's Environmental Quality Services Council study of wetlands issues, for their hard work on this complex subject. Nevertheless, even the sponsors of HEA 1798 have acknowledged that more work is needed to finalize sound wetland conservation law for Indiana. I agree.

Wetlands policy should take into account the variety of interest and be appropriate for Indiana. However, the concerns with this bill go beyond mere differences of opinion on the parameters of wetlands to be protected. Most isolated wetlands would be subject to no protections because of their size or because they would fall into the new definition of "pond." The bill would allow excavation in isolated wetlands, contrary to federal rules and the program Indiana has

operated historically. The new definition of "pond" would likely prevent Indiana from complying with the federal Clean Water Act. The bill would void more than 2,000 projects that were subject to permitting for wetland development under former rules, even if those projects would be covered under HEA 1798. It would create wetlands classifications that are not supported by scientific definitions, and it fails to define many key terms. The bill would greatly narrow the definition of "waters" of the State. It would not achieve the certainty for developers and others in the regulated community that was the original intention of this legislation. Some of these may be unintended consequences, as some provisions did not receive full debate during the legislative process. But they are of high concern.

Accordingly, I have asked Lori Kaplan, the Commissioner of IDEM; John Goss, the Director of IDNR; and Joe Pearson, Assistant Commissioner of Agriculture to establish a Governor's Task Force on Wetlands. The Wetlands Task Force will prepare recommendations for the General Assembly to consider in 2004 to further shape wetlands conservation law in Indiana.

Commissioners Kaplan and Pearson and Director Goss will solicit knowledgeable members of the environmental, business, agriculture communities, interested legislators and known wetland experts to participate in the Task Force. The Task Force should address the specific issues I have identified in this veto message, as well as other issues raised by the public and Task Force members. The Task Force should complete its work by November 1, 2004.

I understand that vetoing HEA 1798 means that the authority of the state to protect isolated wetlands is now in the hands of the Indiana Supreme Court. I am confident that, with more time and good faith efforts, Indiana can fashion a sound wetlands law that balances our environment and natural resources with economic development. I do not believe that HEA 1798 accomplishes this balance.

I hereby veto House Enrolled Act 1798 and return it to the House for further action.

Date: May 8, 2003

FRANK O'BANNON  
Governor

## COMMITTEE MEETINGS ANNOUNCED

Pursuant to House Rule 60, Representative Crawford announced that the Ways and Means Committee will hold several hearings both in Indianapolis and around the state on the issue of property taxes.

## REPORT ON GUBERNATORIAL SUCCESSION

### JOINT REPORT of the Speaker of the House of Representatives and the President Pro Tempore of the Senate October 20, 2003

On September 8, 2003, Governor Frank L. O'Bannon sustained a massive stroke while attending a business meeting in Chicago, Illinois. Hospital reports indicated that the Governor had been incapacitated since 9:30 a.m. Upon receipt of this tragic information, we immediately consulted with our House and Senate attorneys to research the options for dealing with the Governor's incapacity. Our attorneys met numerous times with the attorneys from the Governor's and Lieutenant Governor's Offices. In addition, we met with Chief Justice Randall Shepard to discuss how our respective branches of government might approach the details of the constitutional process for dealing with incapacity. There was no dispute that Article 5, Section 10(d) of the Indiana Constitution conferred upon us the duty to decide whether to request that the Supreme Court declare Governor O'Bannon to be incapable of performing his duties and to appoint the Lieutenant Governor as Acting Governor for the duration of the Governor's incapacity.

Throughout the days following his stroke we carefully monitored Governor O'Bannon's condition. When it became apparent that the Governor was not going to recover in the near future, we established parameters for the action required of us by the Indiana Constitution:

to seek the appointment of the Lieutenant Governor as Acting Governor. Our foremost concern was to have direct communication with Mrs. O'Bannon to confirm that she agreed that the Constitutional procedure should be set in motion. Further, we wanted to be certain of the latest, detailed medical information directly from Governor O'Bannon's attending physician concerning his incapacity to discharge the duties of his office. Finally, we wanted to be certain that there be no doubt that, upon the appointment of an Acting Governor, Frank O'Bannon would remain Governor of the State of Indiana, and that he and his family be entitled to continue to receive his salary and other benefits and entitlements of the office.

Following our receipt of the required medical information, we had a lengthy and comforting telephone conversation with Judy O'Bannon, in which she assured us that she believed the Constitutional process should be invoked without further delay. Thereafter, at 10:30 a.m. on Wednesday, September 10, 2003, we filed with the Supreme Court our written statement suggesting that the Governor was unable to discharge the powers and duties of his office, due to his medical condition. We thus respectfully requested that the Court meet to decide the question, as set out in the Constitution, and if it so found, that it appoint Lieutenant Governor Joseph E. Kernan as Acting Governor.

All five members of the Supreme Court met immediately to consider the request and the Court issued its Order at noon on September 10, 2003.

On September 13, 2003, Governor O'Bannon lost his battle and passed away at 11:33 a.m. Within hours Mrs. O'Bannon returned to Indianapolis from Chicago, meeting Lieutenant Governor Kernan at the State House. Lieutenant Governor Kernan was then sworn in as Governor in the Indiana Supreme Court Chambers, pursuant to Article 5, Section 10(a) of the Indiana Constitution. At 6:00 p.m., the Oath of Office was administered by Justice Theodore R. Boehm. Governor Kernan's remarks were brief, but this excerpt summarized our feelings:

"I've lost my Governor and my friend. So, too, has every Hoosier lost their Governor and their friend."

To officially record the actions taken during these few fateful days, we ask that the following documents be entered into the Journals of the House of Representatives and of the Senate:

The September 10, 2003, letter to Chief Justice Randall T. Shepard from Representative Bauer and Senator Garton.

The letter of September 10, 2003, from the Governor's Chief Counsel to Speaker Bauer and President Pro Tempore Garton advising of Mrs. O'Bannon's support of the transfer of authority to Lieutenant Governor Kernan as Acting Governor under Article 5, Section 10 of the Indiana Constitution.

The September 10, 2003, letter from Dr. Wesley Yapor of Northwestern Memorial Hospital certifying that Governor O'Bannon is currently unable to discharge the powers and duties of his office.

The September 10, 2003, Order of the Indiana Supreme Court finding that Governor Frank O'Bannon is unable to discharge the powers and duties of his office and ordering Lieutenant Governor Joe Kernan to discharge those powers and duties as Acting Governor in addition to serving as Lieutenant Governor.

The September 10, 2003, statement from House Speaker Bauer and Senate President Pro Tempore Garton.

The Governor's Oath of Office signed by Joseph E. Kernan on September 13, 2003, and attested by Justice Theodore R. Boehm.

On September 19, 2003, a memorial service was conducted on the west steps of the State House, where Governor O'Bannon had been inaugurated January 13, 1997.

Respectfully Submitted,

/s/ B. Patrick Bauer,  
Speaker  
Indiana House of Representatives

/s/ Robert D. Garton,  
President Pro Tempore  
Indiana Senate

**Constitutional Provision****INDIANA CONSTITUTION, ARTICLE 5, SECTION 10**

SECTION 10. (a) In case the Governor-elect fails to assume office, or in case of the death or resignation of the Governor or his removal from office, the Lieutenant Governor shall become Governor and hold office for the unexpired term of the person whom he succeeds. In case the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall discharge the powers and duties of the office as Acting Governor.

(b) Whenever there is a vacancy in the office of Lieutenant Governor, the Governor shall nominate a Lieutenant Governor who shall take office upon confirmation by a majority vote in each house of the general assembly and hold office for the unexpired term of the person whom he succeeds. If the general assembly is not in session, the Governor shall call it into special session to receive and act upon the Governor's nomination. In the event of the inability of the Lieutenant Governor to discharge the powers and duties of his office, the General Assembly may provide by law for the manner in which a person shall be selected to act in his place and declare which powers and duties of the office such person shall discharge.

(c) Whenever the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Lieutenant Governor as Acting Governor. Thereafter, when the Governor transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office.

(d) Whenever the President pro tempore of the Senate and the Speaker of the House of Representatives file with the Supreme Court a written statement suggesting that the Governor is unable to discharge the powers and duties of his office, the Supreme Court shall meet within forty-eight hours to decide the question and such decision shall be final. Thereafter, whenever the Governor files with the Supreme Court his written declaration that no inability exists, the Supreme Court shall meet within forty-eight hours to decide whether such be the case and such decision shall be final. Upon a decision that no inability exists, the Governor shall resume the powers and duties of his office.

(e) Whenever there is a vacancy in both the office of Governor and Lieutenant Governor, the general assembly shall convene in joint session forty-eight hours after such occurrence and elect a Governor from and of the same political party as the immediately past Governor by a majority vote of each house.

**September 10, 2003****Governor O'Bannon Declared Incapacitated;  
Lt. Governor Kernan Becomes Acting Governor****Letter to the Chief Justice**

September 10, 2003

The Honorable Randall T. Shepard  
Chief Justice of the Indiana Supreme Court  
Room 304, State House  
Indianapolis, IN 46204

Dear Chief Justice Shepard:

Governor Frank O'Bannon has been a friend and colleague of ours for 33 years. In addition to our immense personal affection for him, we admire his dedication and his service to our state. We both look forward to the successful completion of his term.

However, as you are aware, the Governor has sustained a massive stroke and is in a pharmacological coma. Hospital reports indicate that the Governor has been incapacitated since 9:30 a.m., September 8, 2003. Attached to this letter are the latest reports from Northwestern Memorial Hospital detailing the Governor's condition.

Therefore, pursuant to Article 5, Section 10 of the Indiana Constitution, we are filing with the Supreme Court our written statement suggesting that the Governor is unable to discharge the powers and duties of this office, due to his current medical condition. We respectfully request that the Court meet to decide the question, as set out in the Constitution.

We hope that the Governor's condition is temporary, and we are praying for his speedy recovery. It is our understanding that, under the Constitution, if you determine that the Governor is unable to perform his duties, the Lieutenant Governor shall serve as Acting Governor. However, Governor O'Bannon remains in the office as Governor, and he and his family are entitled to receive his salary and other benefits and entitlements of his office. Upon the Governor's recovery, he may resume his duties by requesting the Court's ruling that no inability exists.

Along with all the citizens of the state, we are anxious to see our Governor back at work, doing what he loves most, leading Indiana toward a better future for all Hoosiers.

Respectfully yours,

/s/ B. Patrick Bauer,  
Speaker  
Indiana House of Representatives

/s/ Robert D. Garton,  
President Pro Tempore  
Indiana Senate

**Letter from Governor's Chief Counsel**

OFFICE OF THE GOVERNOR  
INDIANAPOLIS, INDIANA 46204-2797

FRANK O'BANNON  
GOVERNOR

September 10, 2003

The Honorable Robert D. Garton  
President Pro Tempore  
Indiana State Senate  
3rd Floor, State House  
Indianapolis, IN 46204

The Honorable B. Patrick Bauer  
Speaker  
Indiana House of Representatives  
3rd Floor, State House  
Indianapolis, IN 46204

Gentlemen:

Upon your request, I have communicated with Mrs. O'Bannon and the O'Bannon family. They support the transfer of authority to Lieutenant Governor Kernan as Acting Governor under Article 5, Section 10 of the Indiana Constitution.

Sincerely yours,

/s/ Jon Laramore  
Chief Counsel to the Governor

**Letter from Governor's Attending Physician**

Northwestern Memorial Hospital

September 10, 2003

The Honorable Robert D. Garton  
President Pro Tempore  
Indiana State Senate  
3rd Floor, State House  
Indianapolis, IN 46204

The Honorable B. Patrick Bauer  
Speaker  
Indiana House of Representatives  
3rd Floor, State House  
Indianapolis, IN 46204

Gentlemen:

This letter certifies that Governor Frank O'Bannon is currently

unable to discharge the powers and duties of his office.

Sincerely,

/s/ Wesley Y. Yapor, M.D.

**Statement from House Speaker Bauer  
and Senate President Pro Tempore Garton**

FOR IMMEDIATE RELEASE:

September 10, 2003

INDIANAPOLIS – The following statement was issued jointly by Senate President Pro Tempore Robert Garton (R-Columbus) and House Speaker B. Patrick Bauer (D-South Bend) at a news conference held in the State House at 11 a.m. today:

“After consultation with Governor O’Bannon’s family, the governor’s medical team, and the governor’s counsel, we have this morning submitted a letter to the Indiana Supreme Court pursuant to Article 5, Section 10 of the Indiana Constitution, suggesting that Governor O’Bannon is unable to discharge the powers and duties of his office.

“It is our understanding that if the Indiana Supreme Court determines that Governor O’Bannon is unable to perform his duties, the Lieutenant Governor shall serve as Acting Governor. Upon his recovery, Governor O’Bannon may resume his duties by requesting a ruling from the Indiana Supreme Court that his inability has ceased.

“We hope that Governor O’Bannon’s condition is temporary and we are praying for his speedy and full recovery. We would again ask that all Hoosiers continue to keep Governor O’Bannon and his family in their prayers, as well.

“Governor O’Bannon has been a friend and colleague of ours for 33 years. In addition to our immense personal affection for him, we admire his dedication and his service to our state. We both look forward to the successful completion of his term.”

**In the  
Indiana Supreme Court**

No.  
94S00-0309-MS-406

IN THE MATTER OF THE TEMPORARY INABILITY OF  
GOVERNOR FRANK L. O’BANNON TO DISCHARGE  
THE DUTIES OF OFFICE

Pursuant To Article 5 Section 10 of the Indiana Constitution

September 10, 2003

**ORDER**

On September 10, 2003, Senator Robert D. Garton, President Pro Tempore of the Senate, and Representative B. Patrick Bauer, the Speaker of the House of Representatives, jointly filed a letter stating that the Governor of Indiana, Frank L. O’Bannon, has suffered a massive stroke and is in a pharmacological coma. They express their great admiration and personal affection for Governor and Mrs. O’Bannon. We and millions of other Hoosiers share those sentiments and have received the news of the Governor’s illness with sadness.

The letter also states, “Therefore, pursuant to Article 5, Section 10 of the Indiana Constitution, we are filing with the Supreme Court our written statement suggesting that the Governor is unable to discharge the powers and duties of this office, due to his current medical condition.” The written statement is accompanied by a supporting document from Governor O’Bannon’s physician.

The presenting of this statement by the Speaker and the President Pro Tempore invokes Article 5, Section 10(d) of the Indiana Constitution, which provides as follows:

Whenever the President pro tempore of the Senate and the Speaker of the House of Representatives file with the Supreme Court a

written statement suggesting that the Governor is unable to discharge the powers and duties of his office, the Supreme Court shall meet within forty-eight hours to decide the question and such decision shall be final. Thereafter, whenever the Governor files with the Supreme Court his written declaration that no inability exists, the Supreme Court shall meet within forty-eight hours to decide whether such be the case and such decision shall be final. Upon a decision that no inability exists, the Governor shall resume the powers and duties of his office.

After the statement was filed to invoke our duties under Section 10(d), the Court met to decide the question presented.

Having reviewed the materials provided, we find no basis for doubt or dispute and conclude that the evidence before us demonstrates that the Governor of Indiana is unable to discharge the powers and duties of office and has been unable to do so since 9:30 a.m. on Monday, September 8, 2003. We are informed by those representing Governor O’Bannon that they agree this is so. Accompanying the statement is a letter from Jon Laramore, Chief Counsel to the Governor, stating that Mrs. O’Bannon and the O’Bannon family support the transfer of authority to Lieutenant Governor Kernan.

Our Constitution also provides, “In case the Governor is unable to discharge the powers and duties of his office, the Lieutenant Governor shall discharge the powers and duties of the office as Acting Governor.” Ind. Const. art. 5 § 10(a) (in relevant part). We have now made the requisite finding under Section 10(d) that the Governor is “unable to discharge the powers and duties of his office.” Therefore, the Lieutenant Governor, Joseph E. Kernan, shall discharge the powers and duties of the office of Governor as Acting Governor in addition to serving as Lieutenant Governor. Of course, Governor Frank L. O’Bannon continues to be Governor of Indiana, entitled to the emoluments of that office during the period in which the Lieutenant Governor is serving as Acting Governor. Any official actions taken by the Lieutenant Governor since 9:30 a.m. on Monday, September 8, 2003 are hereby ratified.

Done at Indianapolis, Indiana this 10th day of September, 2003.

/s/ Randall T. Shepard  
Chief Justice of Indiana

Dickson, Sullivan, Boehm, and Rucker, JJ., concur.

**September 13, 2003**  
**Governor O’Bannon Dies;**  
**Governor Kernan Assumes Office**

**Press Release from Governor’s Office**

September 13, 2003

**GOVERNOR O’BANNON DIES**

Governor Frank O’Bannon died at 11:33 a.m. EST today in the neurointensive care unit of Northwestern Memorial Hospital. He was 73 and in the seventh year of his tenure as governor.

**Statement from Senator Garton and Speaker Bauer**

FOR IMMEDIATE RELEASE

“Today, we have lost our governor – a colleague and friend of 33 years. The citizens of the State of Indiana were extended family to Governor Frank O’Bannon. We mourn this tremendous loss and extend our deepest sympathy and support to the first lady and the entire O’Bannon family.”

**Governor’s Oath of Office**

“I, Joseph E. Kernan, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as Governor of the State of Indiana to the best of my skill and ability, so help me God.”

The above and foregoing Oath of Office was subscribed and sworn before me, Theodore R. Boehm, Justice of the Indiana Supreme Court, by the within named Joseph E. Kernan, this 13th day of September, 2003.

/s/ Theodore R. Boehm

### **Remarks by Governor Joseph E. Kernan**

In 1990, I had the opportunity to be with an extraordinary man and woman on a trade mission to eastern Europe. It was Judy and Lt. Gov. Frank O'Bannon. And I came away from that experience understanding the sincerity, the compassion, the passion, the commitment to service of those two wonderful people. And we became friends.

In 1996, knowing of my reservations to run for lieutenant governor with him, when Frank O'Bannon asked me to run, I accepted without hesitation because of my trust, my respect and my belief in him and all that he stood for.

Today, without reservation, Maggie and I accept these new responsibilities that we have with humility, understanding of the challenges that lie ahead, but also with resolve—understanding that as we work together, going forward from here, in the ideals that Frank O'Bannon taught us in his lifetime, that we can do well, that we can do the best for Hoosiers.

I've lost my governor and my friend. So too has every Hoosier lost their governor and their friend.

Tomorrow, Sunday, I would ask that all over the state of Indiana we have a day of remembrance, a day of reflection, sorrow and joy for a life that was lived to the fullest in the service of the people of the state of Indiana so that every Hoosier could live their lives to the fullest.

Thank you all for being with us this afternoon.

**September 19, 2003**

### **Memorial Service for Governor O'Bannon** **West Steps of the Indiana State House**

#### **Remarks by Chief Justice Randall T. Shepard**

These past twelve days – filled with the news that Governor Frank O'Bannon had been stricken and then had died – have been a story of terrible tragedy for the O'Bannon family and for all those who knew and worked with our Governor.

It has also been a story of grieving by people from all corners of our state and beyond. People who'd never met Frank O'Bannon have taken the news in a way usually reserved for the death of someone in their very own family or circle of friends.

I believe that this has been the case because even people who have known about our First Family only through the press or through television or by word of mouth came to the conclusion over time that the O'Bannons have stood for something uncommonly good. People have held the conviction that Frank and Judy O'Bannon have given over their lives to helping all of us achieve the very best for our families, our neighbors, and our state. And so, people feel in nearly an intimate way the loss of Indiana's finest friend.

To describe this collective sense of loss as grief, however, seems too simple, though grief there surely is. It has also been something else. It has been a determined affirmation of what life can be like for Indiana, manifested by a Niagara of good will and hope.

Such affirmation about our connections to each other and to what Indiana can be have long been part of the O'Bannon contribution. When our state was preparing for its hundredth birthday in 1916, a member of the Indiana Centennial Celebration Committee, Lew O'Bannon of Corydon, crusaded about the value of pausing to consider Indiana's achievements and its future, just as Judy O'Bannon has done in preparing us for 2016. He placed his own life in the context of the long flow of humanity to which we all belong. Lew O'Bannon said then, "There is a relation between the hours of our life

and the centuries of time."

Most of a hundred years later, Frank O'Bannon of Corydon said while taking office as Governor, quoting Shaw, "I am convinced that my life belongs to the whole community, as long as I live, it is my privilege to do for it whatever I can. The harder I work, the more I live. Life is no brief candle for me. It is a sort of splendid torch which I got hold of for a moment, and I want to make it burn as brightly as I can before turning it over to future generations."

This spirit of being connected to something larger than ourselves was a hallmark of the way Frank O'Bannon approached life, and his death makes us feel the rightness of it ever more strongly. We are never precisely sure just what that connection is, but we feel it, we have faith in it, and in our better moments we contribute to it.

Today's service proceeds not as simple eulogy, but as the Star said this morning, "an old-fashioned party, celebrating an uncommon life that was made both simple and grand by the power of love."

It is vintage O'Bannon, lifting up of scenes from the human drama to which we and Frank O'Bannon and millions of others have found connection. Children reciting the 23<sup>rd</sup> Psalm in English and Spanish. Music written for today to uplift the soul and some old favorites just right for an Irishman. Prayer to the Supreme Being whom we call by different names.

Messages from two chief executives, Evan Bayh, now a leader of our nation, and Governor Joe Kernan, who with our new First Lady Maggie Kernan, commands the confidence of all as the new bearer of that "splendid torch" about which Frank O'Bannon spoke almost seven years ago, and to whose successful administration we pledge our own support. And yes, Indiana's military and forces of public safety, under whose umbrella we flourish, and who in the present moment serve to remind us of the risk at home and overseas.

All this serves to illustrate the great flow of the human story in which we and the O'Bannon family have been playing our important if temporary parts. "Life is a bridge to somewhere," Judy O'Bannon has said. "We know not where, but we do know that we are connected to things that are good, and real, and eternal." I say she's right.

#### **Remarks by U.S. Senator Evan Bayh**

Mrs. O'Bannon, honored dignitaries, fellow Hoosiers.

Frank O'Bannon would appreciate all of you being here today. Not because he is our focus, he never sought the limelight, but because of the unity demonstrated here today: young and old, rich and poor, rural and urban, black and white, Democrat, Republican and Independent—all together to help our state in time of challenge. That would warm his heart. So I thank you for being with us.

Governor Kernan and Maggie, you are in our thoughts and prayers as you shoulder a tremendous responsibility for which you did not ask. I hope that your burden will be alleviated somewhat by the knowledge that Governor Frank O'Bannon asked you to be his Lieutenant Governor because he felt strongly that you were the best man with the right experience, values, and temperament to lead our state in the event of tragedy. In that assessment, he was unquestionably right.

I am honored to have been asked to say a few words, but I always feel so inadequate on such occasions. I believe strongly that it is important to share our thoughts with those we love while they are still with us. So I hope that today, in addition to everything else, we will remember how fragile life is, understand that we cannot take it for granted, and when we go home tonight take the time to hug our children and to tell those we love how special they are to us. We can never tell what the future may bring.

It is with both a sense of melancholy but also gratitude that we celebrate today the life of Frank O'Bannon. He died as he lived, in service to the people of the state of Indiana.

Frank O'Bannon was my friend and he spent the best years of his life serving the people of his beloved state. Eighteen years following in the footsteps of his father in the Indiana State Senate where he served as the leader of the Democratic party. Eight years as



Lieutenant Governor where we enjoyed a seamless partnership working on behalf of Hoosiers. He was always a source of wise counsel, support, and encouragement. It was in no small part thanks to his selflessness that I had the privilege to serve our state as Chief Executive; it was in large part thanks to his efforts and wisdom that we were able to accomplish much for the people we served. In these last seven years he too had the honor of serving the people of our state as Governor. His accomplishments were many and will be everlasting in the memory of Hoosiers.

His devotion to education was second to none. He fought for higher academic standards, a system of assessments to determine how children are doing toward meeting those goals, and aggressive steps to ensure that every child across our state would have access to the skills necessary to make the most of their God-given abilities.

He worked tirelessly, first as Lieutenant Governor and then as Governor, on behalf of a better economy, and more job opportunities for the people of Indiana. Particularly during these recent difficult years, he redoubled his efforts to ensure that our state would be more competitive not only with our neighboring states but also with those with whom we compete with from abroad. Frank O'Bannon cared about a better quality of life for all Hoosiers.

He worked hard for better health care for the citizens of our state, particularly for our youngest and neediest. I am so very proud that the State of Indiana ranks at the top nationally in providing healthcare benefits to disadvantaged children, and I was privileged to work with him recently in my capacity in the United States Senate to ensure that our state continues to receive full funding for these efforts.

Frank O'Bannon made innumerable other important contributions as well. I last saw him when we were together at the recent dedication of the White River State Park here in Indianapolis. It is a wonderful urban setting which will attract not only tourists from across our state, but also business and industry who want to invest and build not only their businesses but their lives in a place that offers a better quality of life. He was a substantial force in the new park's creation. Just the week before Frank and Judy hosted the Governors from across our country at the wonderful new State Museum—a wonderful setting which allows to us display the finest of Hoosier heritage for the entire country to see. It would not exist without their efforts.

But I believe that Frank O'Bannon will be most remembered not foremost for his material accomplishments although they were many, but instead for the kind of man that he was. There is an old saying that "character is destiny." I believe that is true, and therefore it is no wonder that Frank O'Bannon accomplished so much, because he was a man of true and outstanding character. In all our years of association I never once saw him do something mean or petty. He understood very well that it is far better to be loved than feared. Even more, I always saw him place the public good ahead of self-interest, a truly remarkable thing during an age of cynicism and skepticism about politics and those who serve in public life.

There is an old proverb that says the definition of a statesman is someone "who plants a tree in whose shade he will never rest." Seedlings have been planted across our state that will grow into strong oaks under which future generations will rest with ease, more secure because of the work and the legacy of Governor O'Bannon. He was a statesman.

Frank O'Bannon was also an optimist. Even when the going was toughest and you could tell the responsibilities were heavy upon him, he never wallowed in self-pity. Always upbeat, always caring, always looking for the good in everyone and everything. As Eleanor Roosevelt was once described "she would much rather light a candle than curse the darkness." So too would Frank O'Bannon, his unrelenting optimism has helped to light our way.

In a calling characterized all too frequently by ego and hubris, Frank O'Bannon was always humble and gentle, giving credit to others even when he deserved the lion's share. One of his favorite past times was to go to his cabin in Harrison County in southern Indiana, to commune with nature and to watch the wildlife. That is where Frank and Judy O'Bannon were most at home. That speaks volumes about his character. A man who walked with the highest in

the land but never lost the common touch.

Let me say a word or two about Judy, she was an exemplary First Lady. Leading our state in the celebration of the recent millennium, always concerned that our history and culture never be lost, always reaching out to those in need. She is generous of spirit, and I hope that her contributions to our state will continue for many, many years to come. Judy O'Bannon has done the people of our state proud, and her inner strength has never been more evident than in these trying days. She has both our affection and our admiration.

So today, my friends, we mourn but we can take comfort in the knowledge that our loss has been Heaven's gain. That the life and legacy of Frank O'Bannon will not end with our grieving or with my few inadequate words, but will remain everlasting in the hearts of Hoosiers everywhere as long as we can still recall what makes our state such a special place.

#### Remarks by Governor Joseph Kernan

Judy, Jenny, Polly, Jon, we thank you for giving us Frank O'Bannon. We thank you for the sacrifices and contributions that you have made at his side.

To Chief Justice Shepard and all of the members of the judiciary in the state of Indiana, we thank you.

To the leadership of the Indiana General Assembly, Speaker Bauer, President Pro Tem Garton, and all of the members of both houses and both parties, we thank you.

And all of the people of Indiana and from around the country, we thank you for all of your good wishes and your good will for the state of Indiana.

People used to ask me when I first became lieutenant governor what kind of a guy is Frank O'Bannon? And the answer is that he is exactly as he seems to be. He is the real McCoy.

We hooked up together a little more than seven years ago. Maggie and I, and Frank and Judy, and I watched him win an election he wasn't supposed to win. But he never gloated, he never got in anybody's face. Always the gentleman.

And after that election, Frank and Judy began Building Bright Beginnings for Indiana's infants, and put in place the most aggressive Children's Health Insurance Program in the United States of America. There are a quarter of a million young people in our state who today have health insurance who otherwise would have not.

Frank knew that a child who is not healthy is a child who cannot learn.

He led the formation of the Education Roundtable, putting in place with leadership from all around the state of Indiana standards and expectations for those children and all of their classmates to aspire to the highest and to the best that they could be.

A community college system, one that we didn't have here in Indiana until Frank O'Bannon arrived that to date has meant that 20,000 more Hoosiers have had the opportunity to take advantage of post-secondary education.

In 2000, I saw him win an election that he was supposed to win. And kicked off the second term by inviting 25,000 fourth graders to come here to Indianapolis to learn a little bit more about their government and to be here for the inauguration.

Times were different in this second term. The recession that hit the country, hit Indiana as well. And it hit us pretty hard. But Frank O'Bannon was never a whiner. And Frank said on more than one occasion that, "It is in these times, as difficult as they may be, that you want to be here to lead." And so he did.

We were able to continue progress already begun, provide more money for K-12 and higher education. We protected homeowners from property tax increases they otherwise would have seen because of reassessment, restructuring our tax system in order to create a better environment for job opportunities for Hoosiers all over the state. And Energizing Indiana with unprecedented investment in economic development activity.



He never flinched. He always kept his eye on the ball, but he was always the first to point out it was a bipartisan effort that permitted this to happen. That it was leadership, other than his, that was responsible for these achievements. And even in these tough times that we as Hoosiers as one were able to move forward.

Frank was a gentleman from sole to crown. Never a show-boater. Never a grandstander. Quick to give credit to others.

Of all the pictures that were on display yesterday in the Rotunda, my favorite is a picture of Frank on the first tee of Fort Benjamin Harrison dedicating the new and refurbished golf course. He was in a shirt and a tie and street shoes. And there he was with that beautiful swing of his. And as he said to me afterward, "There I was on the first tee, cameras all around, and the pressure is on. I stepped up, and I striped one right down the middle of the fairway. Two-hundred and twenty-five yards with a little draw."

And his face lit up with that twinkle that we all came to know and to love. Now you can't fake the twinkle. Frank loved to laugh. He loved his friends. He was a great sports fan and he loved to go to a ballgame. And he loved Indiana. He adored Judy and his wonderful family. And he loved to share that twinkle as he would give you a hip and a little bit of a nudge with the elbow and tell you something that would make you laugh. And he'd give you a little bit of the twinkle yourself.

We for generations in Indiana have had an ongoing argument about what the definition of a Hoosier is. I think we know now what the definition of a Hoosier is. It's Frank O'Bannon.

He is the prototype of all those good things that we all aspire to be. He was friendly to everyone. He was hard working. He cared about other people. He was authentic, not flashy, just steady. He was as comfortable in the board room as he was in the barroom.

And while he was our leader, he was still just one of us.

Frank O'Bannon will be a part of us and in Indiana's landscape forever. And we are all better for that.

It has been 12 days that I have been missing my friend. But I consider myself so fortunate to have the rest of my lifetime to remember him, and to know today that Indiana is in a better place because of his leadership.

So let us all follow his lead. Let us focus our attention on our families and on our neighbors, particularly those who are youngest, particularly those who are the oldest, and particularly those who are in most need of our help.

May Frank O'Bannon rest in peace, he deserves it.

#### Remarks by Congresswoman Julia Carson

To this incredible, awesome individual Judy O'Bannon and to Joe Kernan, who has always declared he don't wanna be, but as it turns out Frank says "You're gonna be!", and to everybody gathered here in one place and certainly in one accord: I was Frank O'Bannon's Congresswoman. I am here to represent the entire Indiana Congressional delegation. I don't know of any place in the world where all 11 of us would be together in one place, and really together all in one spirit. We all love Frank O'Bannon and they are all here.

I think the song "America The Beautiful" written by Kathryn Lee Bates reminds me so much of Frank O'Bannon. "Oh beautiful, for spacious skies, for amber waves of grain." But she goes on to say, "Oh beautiful, for heroes prov'd in liberating strife, who more than self their country loved, and mercy more than life. May God thy gold refine till all success be nobleness and ev'ry gain divine."

Paul, in his letter to Timothy—and Paul, as we all know was born a Jew and converted to Christianity, and is often referred to as the 13th apostle—wrote in his letter to Timothy: "Henceforth, there is laid up for me a crown of righteousness. Not only for me, but for all them who love Him and who love His appearance."

Paul continued, "Henceforth, I have fought a good fight. I have kept the faith. I have finished my course."

God bless you.

## OTHER BUSINESS ON THE SPEAKER'S TABLE

The Speaker announced that the House will have a memorial resolution for Governor O'Bannon on Organization Day. The House stood for a moment of silence in memory of Governor O'Bannon.

### MESSAGE FROM THE GOVERNOR

For seven sessions of the Indiana General Assembly, I have had the high honor to serve with you as President of the Senate.

Serving with you gave me the chance to gain a deep appreciation for your work and our role in always moving Indiana forward.

From the first day that I arrived, with no legislative or state government experience, you all—members of both parties, in both Houses—provided me with advice and counsel every step of the way.

I will be forever grateful, and know that you will extend Kathy Davis the same courtesies as she assumes her new responsibilities.

Finally, I want to express my appreciation for the way that we have all come together following the loss of Governor O'Bannon. A special thanks to Speaker Pat Bauer and President Pro Tempore Bob Garton, as they represented the House and Senate with great distinction.

Thank you again for everything, and I look forward to working with you as we continue our efforts on behalf of the people of Indiana.

JOSEPH E. KERNAN  
Governor

## NOMINATION AND CONFIRMATION OF LIEUTENANT GOVERNOR

### MESSAGE FROM THE GOVERNOR

Pursuant to Article 5, Section 10(b), of the Constitution of the State of Indiana, I nominate Katherine L. Davis as Lieutenant Governor. Ms. Davis shall take office, as Lieutenant Governor, upon confirmation by a majority vote in each house of the General Assembly, and hold office for my unexpired term. Attached hereto, as exhibit A, is an Affidavit executed by Ms. Davis establishing that she is qualified to serve as Lieutenant Governor in accord with the provisions of Article 5, Section 7, of the Constitution of the State of Indiana.

JOSEPH E. KERNAN  
Governor

State of Indiana     )  
                                  ) SS:  
County of Marion    )

### AFFIDAVIT

I, Katherine L. Davis, hereby affirm the truth of the following:

1. I am forty-seven (47) years of age, date of birth: June 24, 1956.
2. I have been a citizen of the United States of America my entire life.
3. I have been a resident of the State of Indiana for a period in excess of five (5) years.

Further affiant sayeth not.

I affirm under penalty of perjury that the foregoing representations are true.

Dated this 20th day of October, 2003.

Katherine L. Davis

### House Resolution 1(ss)

Representatives Stilwell and Richardson introduced House Resolution 1(ss):

A HOUSE RESOLUTION to confirm the nomination of Katherine L. Davis to take office as Lieutenant Governor.

*Whereas, Governor Frank O'Bannon died September 13, 2003, and Governor Joseph Kernan became Governor to hold office for Governor O'Bannon's unexpired term pursuant to Article 5, Section 10(a) of the Indiana Constitution;*

*Whereas, Upon Governor Kernan becoming Governor, there was a vacancy in the office of Lieutenant Governor;*

*Whereas, Under Article 5, Section 10(b) of the Indiana Constitution, the Governor shall nominate a Lieutenant Governor who shall take office upon confirmation by a majority vote of each house of the General Assembly and hold office for the unexpired term of the person whom she succeeds;*

*Whereas, The Governor has called the General Assembly into special session to receive and act upon the Governor's nomination; and*

*Whereas, The Governor has nominated Katherine L. Davis to take office as Lieutenant Governor: Therefore,*

*Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:*

SECTION 1. That the House resolves to confirm the nomination of Katherine L. Davis to take office as Lieutenant Governor to fill the unexpired term of Governor Joseph Kernan.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Governor Joseph Kernan.

The resolution was read a first time and adopted by acclamation. The nomination of Katherine L. Davis as Lieutenant Governor was confirmed by the House of Representatives.

#### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has voted to confirm the nomination of Katherine L. Davis as the Lieutenant Governor of the State of Indiana.

MARY C. MENDEL  
Principal Secretary of the Senate

#### HOUSE MOTION

Mr. Speaker: I move that Representatives Austin, Dickinson, Mays, Klinker, Summers, L. Lawson, Welch, Pond, Becker, Budak, Noe, Duncan, Richardson, and Scholer be appointed by the Speaker of the House of Representatives, to wait upon Governor Kernan and the Lieutenant Governor nominee, Katherine L. Davis, and to escort them to the Chambers of the House of Representatives.

DAY

Motion prevailed.

Governor Joseph E. Kernan and Lieutenant Governor Katherine L. Davis were escorted into the Chambers by Representatives Austin, Dickinson, Mays, Klinker, Summers, L. Lawson, Welch, Pond, Becker, Budak, Noe, Duncan, Richardson, and Scholer. The House recessed for remarks by the Governor and the Lieutenant Governor.

#### RECESS

The House reconvened with the Speaker in the Chair.

*[Journal Clerk's Note: a swearing in ceremony for the new lieutenant governor was held on October 20 at 12 noon in the South Atrium of the State House. Chief Justice Randall T. Shepard administered the oath of office to Lieutenant Governor Katherine L. Davis, which oath is as follows:*

*"I, Katherine L. Davis, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as Lieutenant Governor of the State of Indiana to the best of my skill and ability, so help me God."]*

## ADJOURNMENT OF FIRST SPECIAL SESSION

### HOUSE MOTION

Mr. Speaker: I move that a committee of four members be appointed by the Speaker to confer with the Senate for the purpose of ascertaining if the Senate has any further legislative business to transact with the House of Representatives during the First Special Session of the 113th General Assembly.

CHOWNING

Motion prevailed. The Speaker appointed Representatives Goodin, Kuzman, Gutwein, and Noe.

### COMMITTEE REPORT

Mr. Speaker: Your Committee, which was appointed to ascertain whether the Senate has further legislative business to transact with the House of Representatives concerning the First Special Session of the 113th General Assembly, respectfully reports that it has waited upon the Senate and that the Senate has no further legislative business to transact with the House of Representatives.

GOODIN  
GUTWEIN

KUZMAN  
NOE

Report adopted.

### HOUSE MOTION

Mr. Speaker: I move that a committee of four members be appointed by the Speaker to confer with the Governor for the purpose of ascertaining if the Governor has any further communications to make to the House of Representatives with respect to the First Special Session of the 113th General Assembly.

CROOKS

Motion prevailed. The Speaker appointed Representatives Bottorff, C. Brown, LaPlante, and Lehe.

### COMMITTEE REPORT

Mr. Speaker: Your Committee, which was appointed to confer with the Governor to ascertain whether he has any further communications to make to the House of Representatives with respect to the First Special Session of the 113th General Assembly, respectfully reports that it has waited upon the Governor and that the Governor has no further communications to make to the House of Representatives.

BOTTORFF  
LA PLANTE

C. BROWN  
LEHE

Report adopted.

### HOUSE MOTION

Mr. Speaker: I move a committee of four members be appointed by the Speaker to notify the Senate that the House of Representatives has completed its business for the First Special Session of the 113th General Assembly and is ready to adjourn.

DICKINSON

Motion prevailed. The Speaker appointed Representatives Harris, Avery, Koch, and Leonard.

### COMMITTEE REPORT

Mr. Speaker: Your Committee, appointed to notify the Senate that the House of Representatives has completed its business and is ready to adjourn, reports that it has notified the Senate of the message of the House of Representatives.

HARRIS  
KOCH

AVERY  
LEONARD

Report adopted.

### HOUSE MOTION

Mr. Speaker: I move that a committee of four members be appointed by the Speaker to notify the Governor that the House of Representatives has completed its business for the First Special

Session of the 113th General Assembly and is ready to adjourn.

GIA QUINTA

Motion prevailed. The Speaker appointed Representatives V. Smith, Denbo, Heim, and Neese.

COMMITTEE REPORT

Mr. Speaker: Your Committee, appointed to notify the Governor that the House of Representatives has completed its business and is ready to adjourn, reports that it has notified the Governor of the message of the House of Representatives.

V. SMITH  
HEIM

DENBO  
NEESE

Report adopted.

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the following committee report:

“Your committee appointed to ascertain whether the House of Representatives has any further legislative business to transact hereby reports that your committee of Senators Skillman and Lewis has conferred with the House of Representatives and the House of Representatives has no further business to transact with the Senate.”

MARY C. MENDEL  
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the following committee report:

“Your committee appointed to confer with the Governor to ascertain whether or not he has any further communications to make to the Senate hereby reports that your committee of Senators Landske and Rogers has waited upon the Governor and that the Governor has no further communications to make to the Senate.”

MARY C. MENDEL  
Principal Secretary of the Senate

MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adjourned *sine die* at 11:30 a.m. on the 20th day of October, 2003.

MARY C. MENDEL  
Principal Secretary of the Senate

HOUSE MOTION

Mr. Speaker: I move that the House of Representatives of the First Special Session of the 113th General Assembly do now adjourn *sine die* at 11:42 a.m., this twentieth day of October, 2003.

WEINZAPFEL

Motion prevailed. The House adjourned *sine die*.

B. PATRICK BAUER  
Speaker of the House of Representatives

DIANE MASARIU CARTER  
Principal Clerk of the House of Representatives